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## BUSINESS NOTICES.

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## GAZETTE.

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nership, and the advances of one partner in car

Story says the assignces of a bankrupt partner

after the payment of joint debts, including lieus

held by solvent partners. Story's Partn., §361;

Coll. do., 2135; 3 Kent's Comm., 37. The con-

erse may be applied. If Babcock, the half

owner, were bankrupt, and Spencer & Co. solvent.

the latter would have a clear right to have from

Babcock's share one half of their advances, over

all other claims. The mortgagees take the mort-

B. B. STANLEY FOR THE MORTGAGEES.

The mortgages are valid under the statute.

There are no third parties, as contemplated in

Sec. 1263, before the Court. This is a claim of

Spencer & Co., and not of their creditors. Both

the owners and the mortgagors had actual notice,

and the mortgages would be good between the

parties, but for Sec. 639, providing, "to render

the mortgage valid and effectual, it shall be re-

recorded at the Custom-House," not at the

Registrar's. The statute makes the Custom-

House the place to learn the title and incum-

brances of Hawaiian vessels, and not the Regis-

trar of Coveyances. Mortgages of ships must

be recorded with the Collector. Another record

would be useless. State statutes relative to re-

cording chattel mortgages, do not over-ride U. S.

statutes for recording mortgages of ships. Fon-

taine vs. Beers, 19 Ala., 722; Pars. Mar. Law, 1,

57. Recording at the Registrar's, alone, would

be invalid. See Badlam vs. Tucker, 1 Pick., 389;

No authority was shown for the lien claimed.

on the point of individual shares, as contra-

distinguished from a mortgage of the whole ves-

sel. The whole vessel was in fact mortgaged,

and all the shares are represented here. Even if

such were not the case, no share-owner could

mortgage anything but his own share, for it can

not for a moment be contended that this was a

partnership. The agreed facts set up or litimate

none. Part owners are clearly liable, in solido,

for advances on the vessel by another part owner.

1 Pars. Shipping and Adm., 100. et seq., and

Notes. But they have no lien, as such, but only

when in fact partners. Ib., pp. 107, 108. Mort-

gagees precede material men not in actual pos-

When the special relation of partnership does

not exist, there is no lien by partners, according

to all the authorities. Larch, 2 Curtis, C. C. R.,

A ship's husband, as such, has no lien. 1 Pars.,

HARTWELL, J. : First : Are mortgages recorded

with the Collector, and not with the Registrar

valid? The statute reads thus: "All mort-

gages of chattel property \* \* shall, in order

to their validity, be recorded in the Office of the

Registrar of Conveyances, in default of which,

rights and interests." Sec. 1263 Civ. Code. "It

shall be the duty of the Collector-General to

keep a record of all transfers, by sale or other-

wise, and all mortgages or hypothecations, of any

Hawaiian registered vessel, or any part thereof;

and no such transfer, mortgage, or hypothecation,

shall be valid or effectual, unless made by written

instrument, nor until such instrument shall have

been deposited with said Collector-General for

record," \* \* Sec. 640, Tb. "Every transfer

of a registered vessel, or any part thereof, duly

made and recorded as prescribed in the last pre-

ceding section, shall entitle the transferee, being

a Hawaiian subject, or otherwise entitled to the

right of registry of such vessel, to all the rights

and interests of the original registered owner, in

respect to such vessel and entry." Sect. 641, 15.

sections 642 and 643, Ib., provide for recording

the discharge of mortgages with the Collector,

under penalty of fine, and require the owner to

produce before the Collector the certificate of

registry within three days, under penalty of seiz-

It was claimed in behalf of the mortgage

that the question is between the original parties

masmuch as the assignees merely represent Spen

cer & Co., and take the interests of that firm.

subject to all legal und equitable claims existing

at the date of the assignment. The authorities

are uniform, that assignees take the property of a

bankrupt subject to the liens legally and boson

fide existing against him. James's U. S. Bank-

rupt Law, p. 36, et seq., and cases there cited

Story's Partn., § 361. But these are not proceed

ings in bankruptcy, but between the mortgagees

and the mortgagor's assignees, who are certainly

third parties in the meaning of the statute. By

the decision of this Court in Ellis vs. White, at

mortgage can not supply the want of registry

according to law, and the validity of this registry

at the Custom-House must, therefore, be passed

are and condemnation of the vessel.

Ship. and Adm., p. 112.

ession. Scio., I Adm. and Eccl. Rep., 358.

Wilson vs. McLenn. 2 St., 492.

common benefit.

rying on the joint business, are a lies on the

parnership stock. Coll. Partn., p. 109.

take only his rights in the surplus remain

VOL. VI--NO. 13.

BUSINESS NOTICES.

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HONOLULU, WEDNESDAY, APRIL 13, 1870.

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vorable terms. For particulars apply at the office F. A. SCHARFER & CC. Insurance Notice. THE AGENT FOR THE BRITISH FOR eign Marins Insurance Company, (Limited), has served instructions to reduce the rates of Insur-serveen Homolulu and Ports in the Parific, and is now pared to issue Policies at the Lourest Raics, with a sp-

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The employment of the schooner by the owntext is notice; the Collector's record both gives and promptly triended to.

The only object of recording with the Register is notice; the Collector's record both gives and promptly triended to.

Supreme Court-in Banco.

APRIL 1, 1870. H. A. P. Carter and T. Davies, Assignees of C. N. Spencer & Co., es. C. R. Bishop & Co. and L. B. Green, Mortgagees.

Case submitted as follows:

1. The Hawaiian schooper Pauahi, then owned as to one-half thereof by William Babcock, and one-fourth thereof by Henry Macfarlane, and onefourth thereof by Lucretia B. Green, Hawaiian citizens, was duly registered in the Custom House of Honolulu, on the 10th day of June,

2. The one-fourth of the Hawaiian school called the Panaki, was, on the 10th day of June owned by C. N. Spencer & Co., and the legal title to said one-fourth share stood in the name of Henry Mucfarlane, (one of the members of said firm engaged in mercantile business in Honolulu.) as appears by the certificate of the registry of said schooner, in the record of the Custom House at Honolnia.

3. The said William Babcock and the said C N. Spencer & Co., on the 5th of June, 1869 executed a mortgage of their said three-fourths shares of the said schooner to the banking firm of Bishop & Co., of Honolulu, to secure their promissory note of the same date, for the sum of Four Thousand Dollars, borrowed by them from the said Bishop & Co., which mortgage was received for record, June 11th, 1869, at 3h. 30 o'clock r. M., and recorded on pages 344, 345. Book B, of transfer of Hawaiian vessels, by W. F. Allen, Collector-General of Customs, at the Custom-House, in Honolulu, Hawaiian Islands. and which sum of money, so borrowed and secured by mortgage, the said mortgagee claims to have formed part of the original purchase money of said schooner.

4. The said Lacretia R. Green bargained and sold all her said one-fourth share in the said schooner to the said Henry Macfarlane by bills of sale dated the 8th of January, 1870, in consideration of \$2,500, free and discharged of all claims against her share, except the sum of \$500; that at that date the said one-fourth share of said schooner was owned by C. N. Spencer & Co., and the legal title stood in Henry Macfarlane, one of the members of said firm, as appears by the bill of sale recorded in the Custom-House at Honolulu, on the 10th day of January, 1870.

5. That for the said purchase money,-\$2,500, the said Henry Macfarlane, on the 8th day of January, 1870, executed a mortgage back to Lucretia B. Green, of one-fourth share in said vessel, to secure the payment of two promissory notes. drawn by C. N. Spencer & Co., of which firm the said Henry Macfarlane was a member, for \$1,250 each, payable in three and six months after the date 1st January, 1870, with interest at I per cent. per month, and that the sum of \$500 was indorsed on one of the said notes: "Received on account of the within note \$500; same being indebtedness of Mrs. Green 14th interest to date," and that said mortgage was received for record, January 10th, 1870, at 12h, 10' P. M., and recorded on pages 375, 376. Book B, transfer of Hawaiian vessels, at the Custom-House in Hono-

6. The said firm of C. N. Spencer & Co., by deed dated 12th day of February, 1870, assigned and made over all their estate, property, and effects, including their said interest in the said Hawaiian schooner to Theo. H. Davies and H. A. P. Carter, in trust for themselves, and the other creditors of the said firm, and which was duly recorded in the Office of the Registrar of

7. From the time of the purchase of the said schooner Panahi, until January 1, 1870, the said firm of C. N. Spencer & Co. acted as agents or ship's busbands for the said schooner, and at the date of the said assignment, a balance of \$2,614.72 stood to the debit of the said schooner, on the books of the said firm, which the said assignees claim to be a lien on the said schooner, in priority to the said mortgagees, who claim to hold the first lien on the said schooner, and deny that C. N. Spencer & Co., as part owners, and agents and ship's hubands, or their assignees, have, or are entitled to, a lien on the said schooner. And the said mortgagees traverse the accounts of the said C. N. Spencer & Co., agents and ship's husbands, and deny that the above debit, so standing on their books at the date of their assignment, i

8. On the part of the said assignees and creditors, it is also alleged that the said mortgages are void at law, as against the creditors of saul firm, by reason of their not having been recorded in the Office of the Registrar of Conveyances, in accordance with Chapter 26, Art. 51; of the Civil Code of this Kingdom; but which is controverted by the said mortgagees, who allege that their said mortgages are valid and effectual, as the said instruments were duly deposited with the Colector-tieneral of Gustoms, and by him duly recorded within three days after their execution and delivery, in accordance with the provisions of Chapter 9. Article 24, of the Civil Code of this

J. MONTGOMENT FOR THE ASSIGNEES. The purposes and effects of registry with the Prof. Parsons, in his Treatise on Maritime Law, Collector appear in Secs. 637 and 641, viz. : to give the transferee the rights of the original House, under an Act of Congress, and not under owner, but this statute does not superseds the the State laws; but the question of the constinecessity of recording with the Registrar, as totionality of our registry laws is not, in this grovided in Sec. 1263. The English and Amer- case and its whether Sect. 640 is an exception ican statutes provide expressly that registry with to Sec. 1263, or more correctly speaking, a part the Collector shall be valid against all parties. thereof, or is something additional and distinct, and further provide details for recording and requiring a second registry for additional and dis furnishing copies of records; all of which is omitted in our statute, which is conclusive evidence demands that construction which is contemplated that the Legislature never intended to except in Sections 11, 12 and 13 of the Civil Code, con vessels from Sec. 1263. It can not be contended cerning laws in pari moteria, the reason and that a ship is not a chattel—the word used in spirit of the law in doubtful cases, and rejecting the statute. Smith's Merc. Law, p. 238. constructions which lead to an absurdity.

The creditors are third parties, affected by is the doctrine both of the civil and common law, illegal registry. If there has been ignorance of as expressed by the maxim of the Pandects the law, concerning these records, on the part of "Incivile est nisi tota lege perspecta, una affqua the community, that shall not affect legal rights particula proposita judicare;" by Coke, that " It Spencer & Co.'s advances are contected by a lien is the most natural and genuine exposition of a upon the ship, as held by L . Chancellor Hard- statute to construe one part of a statute by anwicke, in Poddington vs. Hallett, I Ves., 197. other part of a statute, for that best expresseth See, also, I Bell's Comm., 505, and Abbott on the meaning of the makers," Coke, Litt., 387 a.; Shipping, p. 142; Story's Parto., § 440, et seq. by Lord Mansfield, in Rex vs. Loxdale, I Bur., Parsons says the authorities on this point are irreconcilable. Pars. Parta, p. 563. Such being made at different times, and not refer the case, this Court is free to adopt the principle other, shall be taken and constraind together, as most conducive to the rights of parties, and to one system, and as explanatory of each other."

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with all the privileges and liabilities consequent thereon. The former is insufficient for either of these purposes, by the express words of the statute, and the latter is indispensable. The statute requires the Collector to keep records, and to furnish cupies of the record of registry on the owner's application. Sec. 639. Those rewhether the statute expressly makes them so, or not. The fact, which is common knowledge here, that mortgages of ships have uniformly been recorded only with the Collector, and that no ap-

nformation thereof, is significant. ragors' interests, subject to liens. Opportunity Second : Have Spencer & Co., as ship's hus for frand would be opened, if part owners can portgage their shares and destroy the lien of coands and part owners, a lien for their disburse ments for the vessel, preceding the mortgagees" owners or co-partners, for advances made for the claims?

plication was ever made to the Courts, to obtain

The statutes of this country make no provision for preferred claims by those furnishing materials. repairs, or supplies. A maritime lien gives a peculiar privilege over other debts, a right to the property itself, or jus in re, and whether it exists by statute or by the general maritime law, it is strict juris, and should receive a construction limited solely to the objects for which it exists. It is a case under the maxim of the Civilian Panins, - " Que propter necessitatem recepta cessity justifies no argument beyond the case it has enforced," See The Foung Mechanic. The Kiersurge, 2 Curtis, Circ. Court Repl., 404, 421. Those objects are, to promote the interests of commerce, and that " ships may plow the ocean, and not rot by the wall." In the bark George, our late learned Chief Justice Lee appears to have regarded the doctrine of the civil law which allows flons for supplies on domestic vessels, as in force here. We are not aware that the law of that case has been doubted in this Court, or that shipping or mercantile interests have suffered any inconvenience therefrom. But by all the authorities to which we have seeess, that decision is not applicable to the present case. The lien of part owners who are also ship's husbands, for their advances, was extended even by Lord Hardwicke only to cases of partnership. We have decided, in Tucker vs. Metcalf's Exec'rs, that a partnership exists only by virtue of an agreenent to that effect between the partners. sons owning shares in a vessel are prima facie part-owners, and not partners. The Larch, Curt., C. C. Rep., 427. The agreed facts in this case allow us to view the shareholders in no light as partners in single ventures, or in the general besiness of the ship. Even if we are to regard this as a partnership, the law of England, to-day, is clear, that Lord Hardwicke's decision in Doddington va. Hallet, is indefensible. In the Larch, ubi supra, tried before Justices Curtis and Ware, two of the most eminent admiralty Judges in the United States, the following is the language of the Court, after stating that Doddington va-Hallet, as over-ruled by Lord Elden, in ex parte Young, was no longer law in England: "There has been some diversity of decisions in this country; but I think it has proceeded from diversity in the views taken of the particular facts of the cases, rather than from any real difference no such instrument shall be binding to the detriin principles. That the owners of a vessel may ment of third parties, or conclusive upon their other property, and that when they are so, each has a lien, can not be doubted. But where no such special relation exists, where they are merely part-owners, and, as such, tenants in common that one has no hen on the share of another for advances, I believe to be equally clear. And when this distinction is attended to, the diversity between the cases is much lessened, if it be not entirely removed." An examination of the cases cited leads us to think that the cases are not now as "irreconcilable" as Prof. Parsons, in one part of the text of his valuable treatise on Ship-

> ping and Admiralty, seems to think. The authorities cited are clearly to the effect that neither a part-owner, as such, nor a ship's husband, as such, has a lien on the shares of the other owners, or on the entire ship for advances. See, also, Flanders on Shipping, § 388. The cases distinguish between the fien on the proceeds of a voyage and on the ship itself.

The shares morigaged by Speacer & Co. could to larger be their own security for advance made by themselves. Babcock's share was also mortgaged, together with that of Spencer & Co., and with their full knowledge. How could they expect his share to pay them for subsequent out lay? Even a lien for repairs must not be allowed to remain unenforced, until bond fide purchasers may have reason to think that none exists. Ad miralty Courts do not sit to enforce stale claims To cite again from the Civilians: " Every one nust suffer the consequences of his own delay;" unicuique mora sua nocet." To allow the lies claimed in this case would be going further than ignoring were lackes, or neglect: it would open the door to endless difficulties, one of which vould be, to destroy the value of mortgage se

Although we are not bound by the English and American decisions, to the extent and in the nanner that the courts there are governed by hem, we have, on that account, no more power

upon in this case. Counsel cited the remarks of to decide arbitrarily. The case has been fully and ably presented by upon the sufficiency of registry in the Customthe learned counsel, but we are compe full consideration of the authorities, and by fixed principles of law, to distillow the chim of the serignees, and to declare the mortgages to be

> Let judgment be entered accordingly, with costs to the mortgagues and tail bies with

THE Buildin correspondent gives the following

NATURAL SCIENCE.—They tell a good story of a certain well known protessor of natural science. It was the custom of the doctor to encourage his good log class to collect specimens and bring them into the class for analysis and classification. So one day a number of specimens were laid upon the table and among them one broken bit; which, although streaked and stained to impose on the dector, really nothing but a pecca of common brick. I time the professor came to the specimens. T varyta from the Cheshise minea;" halding up snother. "This is a piece of feldepar from the Portland

quarries; the next is a piece of quarts legs: Hadden and this," coming to the orick, "is a piece of implement from some member of this class." THE New York Commercial Advertises as suicide is the sights with which the Aimighty res

FIFTE-ONE members of the present Congress served to the group during the rebellion.